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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,877	12/19/2001	William Earl Webler	5618P2977	1005

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EXAMINER	
FOREMAN, JONATHAN M	
ART UNIT	**PAPER NUMBER**
3736	

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/027,877	WEBLER, WILLIAM EARL	
	Examiner	Art Unit	
	Jonathan ML Foreman	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 November 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20 and 26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20 and 26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

New grounds of rejection are contained within this Office Action. Accordingly this action has been made Non-Final.

Claim Objections

1. Claim 10 is objected to because of the following informalities: Claim 10 states "the anemometry circuitry interface". However, claim 1 only refers to "an interface". Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1 – 3, 5 – 9, 11, 12, 14 – 20 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,063,085 to Tay et al. in view of U.S. Patent No. 6,539,792 to Lull et al.

In regards to claims 1 – 3, 5 – 9, 11, 12, 14 – 20 and 26, Tay et al. discloses an elongate member as a needle, in that Tay et al. discloses the probe as a hollow elongated member (Col. 20, lines 12 – 18), or rod insertable into a body; a thermally conductive heating element coupled to the distal portion of the elongate member, the heating element comprising a wire whose electrical resistance changes in response to a change in temperature (Col. 20, lines 45 – 49). Tay et al. discloses anemometry circuitry and comparing a first resistance and a second resistance of the at least one heating element to indicate a change of conditions related to a distance of penetration of

the heating element (Col. 20, lines 48 – 54). Tay et al. discloses an outer diameter between 0.009 inches and 0.134 inches (Col. 19, line 56 – Col. 20, line 18). The heating element is less than the thickness of the tissue in which it is inserted. In order to operate the device as disclosed by Tay et al. must include a first and second lead coupled to the at least one heating element. However, Tay et al. fails to disclose the anemometry circuitry comprising the heating element and a variable resistor as resistive circuit element. Nor does Tay et al. disclose an amplifier coupled to the circuit to amplify the voltage difference sensed between the heating element and the variable resistor, and to input the voltage difference back to the circuit to modify the temperature of the heating element such that the heating element assumes a second resistance. Lull et al. teaches a circuit for use in a constant temperature anemometer (Col. 17, lines 10 - 15) comprising a balanced circuit (Col. 11, lines 40 – 46) having the heating element (R_1, R_2) and a variable resistor (Col. 7, lines 49 - 52) as resistive circuit element and an amplifier coupled to the circuit to amplify the voltage difference sensed between the heating element and the variable resistor, and to input the voltage difference back to the circuit to modify the temperature of the heating element such that the heating element assumes a second resistance (Col. 7, line 25 – Col. 8, line 22). Lull et al. discloses anemometry circuitry separately coupled to each of the heating elements. It would have been obvious to one having ordinary skill in the art to modify the circuitry as disclosed by Tay et al. to include an interface to the balanced circuit as disclosed by Lull et al. in order to compare variations in the resistance of the heating elements (Col. 17, lines 10 – 15). Tay et al. fails to disclose the heating element being between 0.010 inches and 0.400 inches. However, a change in the size of a prior art device is a design consideration within the skill of the art. ***In re Rose***, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

4. Claims 4 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,063,085 to Tay et al. in view of U.S. Patent No. 6,539,792 to Lull et al. as applied to claims 2 and 11 above, and further in view of U.S. Patent No. 3,470,604 to Zenick.

In reference to claims 4 and 13, Tay et al. in view of Lull et al. discloses a needle, but fails to disclose the needle being formed of stainless steel. However, stainless steel is well known in the medical industry for its strength, durability, ease of sterilization etc. Zenick discloses a hypodermic needle that is formed of stainless steel (Col. 1, line 65). It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the needle as disclosed by Tay et al. in view of Lull et al. out of stainless steel as taught by Zenick in order to have a sturdy, durably and easily sterilized hypodermic needle for insertion into a patient.

5. Claims 10 and 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,063,085 to Tay et al. in view of U.S. Patent No. 6,539,792 to Lull et al. as applied to claims 1 and 11 above, and further in view of U.S. Patent No. 5,873,835 to Hastings et al.

6. In regards to claim 18, Tay et al. in view of Lull et al. fails to disclose the forming the elongate member of an electrically conductive material and coupling the first end of the heating element to an electrically conductive lead and coupling the second end of the heating element by the elongate member. Hastings et al. teaches a portion of the elongate member being electrically conductive and the anemometry circuitry interface comprising an electrically conductive lead electrically coupled to a first end of the heating element, and the elongate member electrically coupled to a second end of the heating element (Col. 11, lines 33 – 35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the elongate member as disclosed by Tay et al. in view of Lull et al. to be an electrically conductive material and coupling the first end of the heating element to an electrically conductive lead and

coupling the second end of the heating element by the elongate member as taught by Hastings et al. in order to reduce the resistance of the electrical connections to the heating element (Col. 11, lines 33 – 35).

Response to Arguments

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JMLF

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